

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:

MICHAEL W. BRADLEY

Debtor.

Chapter 11

Bankruptcy No. 14-44687

Judge Timothy A. Barnes

NOTICE OF MOTION

To: See the Attached Service List

PLEASE TAKE NOTICE that on October 20, 2015 at 10:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge Timothy A. Barnes, or any judge then sitting in his stead, in Courtroom 613 of the United States Bankruptcy Court, Everett McKinley Dirksen Building, 219 S. Dearborn St., Chicago, Illinois, and then and there present the Motion to Dismiss or Convert Chapter 11 Case, a copy of which is attached hereto and served upon you. You may appear and be heard if you so choose.

Respectfully submitted,

COLFIN BULLS FUNDING A, LLC

By: /s/ Kristine M. Kolky
One of its Attorneys

CERTIFICATE OF SERVICE

I, Kristine M. Kolky, an attorney, hereby certify that I caused a true and correct copy of this Notice and Motion to be served on the attached service list as indicated from my offices located at 111. E. Wacker Avenue, Chicago, Illinois 60601, on this the 7th day of October, 2015.

/s/ Kristine M. Kolky

SERVICE LIST

VIA FIRST CLASS MAIL:

Debtor

Michael W. Bradley
4426 S. Greenwood Avenue
Chicago, IL 60653

America's Service Company
P.O. Box 1820
Newark, NJ 07101

Arrow Financial
c/o Blatt, Hasenmiller, Leibsker & Moore
125 S. Wacker, #400
Chicago, IL 60606

AT&T Mobility
700 Long Water Drive
Norwell, GA 02061

Beneficial Illinois
c/o Freedman, Anselmo, Lindberg
1771 W. Diehl, #150
Naperville, IL 60566

Chase Mortgage
P.O. Box 78420
Phoenix, AZ 85062

Cook County Clerk
118 N. Clark, #434
Chicago, IL 60602

Frackiel Builders
c/o Daniel P. Scott, LTD
5440 N. Cumberland
Chicago, IL 60656

Midland Credit Management, Inc.
PO Box 2036
Warren, MI 48090

William J. Bradley
3003 Tamiami Trail N #210
Naples, FL 34103

Yolanda Edwards-Bradley
4426 S. Greenwood Avenue
Chicago, IL 60653

VIA CM/ECF ELECTRONIC FILING:

U.S. Trustee

Patrick S. Layng
Office of the U.S. Trustee, Region 11
219 S. Dearborn St., Room 873
Chicago, IL 60604

Attorney for JPMorgan Chase Bank, N.A.

Shara C Cornell
Manley Deas Kochalski
P.B. Box 165028
Columbus, OH 43216

Attorney for US Bank National Association

Joel P. Fonferko
Codilias & Associates, P.C.
15w030 N. Frontage Road, Suite 100
Burr Ridge, IL 60527

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MOTION TO DISMISS OR CONVERT CHAPTER 11 CASE

Creditor, ColFin Bulls Funding A, LLC (“ColFin”), as successor in interest to MB Financial Bank, by and through its attorneys, TAFT, STETTINIUS & HOLLISTER LLP, moves this Honorable Court pursuant to 11 U.S.C. § 1112(b) for an Order dismissing this case for cause, or in the alternative, converting this case to a Chapter 7, and in support thereof, states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Internal Operating Procedure 15(a) of the U.S. District Court for the Northern District of Illinois, Eastern Division. This matter is a core proceeding under 28 U.S.C. § 157(b)(2), and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested herein is predicated upon 11 U.S.C. § 1112(b).

PARTIES AND BACKGROUND

1. On December 16, 2014 (the “Petition Date”), Michael W. Bradley (the “Debtor”) filed for relief under Chapter 11 of the United States Bankruptcy Code.

2. The Debtor is indebted to ColFin, and ColFin claims a valid security interest in the properties located at and commonly known as: (i) 4800 S. Champlain, Chicago, Illinois (the

“Champlain Property”); (ii) 4013-15 S. Calumet, Chicago, IL (the “Calumet Property”); and (iii) 7747S. Kingston Avenue, Chicago, Illinois (the “Kingston Property”).

The Champlain Property

3. The Champlain Property is subject to a foreclosure action currently pending in Cook County that ColFin filed on November 2, 2009 as case number 09 CH 42819 (the “Champlain Foreclosure Case”).

4. ColFin filed the Champlain Foreclosure Case after the promissory note (the “Champlain Note”) secured by the Champlain Property matured on October 28, 2008. A true and accurate copy of the Champlain Note as it has been modified from time to time, is attached hereto as **Exhibit 1**.

5. ColFin has a valid security interest in the rents collected on the Champlain Property pursuant to an assignment of rents (the “Champlain Assignment of Rents”). A true and accurate copy of the Champlain Assignment of Rents is attached hereto as **Exhibit 2**.

6. A Motion for Summary Judgment and Motion to Appoint Receiver were pending in the Champlain Foreclosure Case when the Petition was filed.

The Calumet Property

7. The Calumet Property is subject to a foreclosure action currently pending in Cook County that ColFin filed on November 2, 2009 as case number 09 CH 42821 (the “Calumet Foreclosure Case”).

8. ColFin filed the Calumet Foreclosure Case after the promissory note (the “Calumet Note”) secured by the Calumet Property matured on October 28, 2008. A true and accurate copy of the Calumet Note as it has been modified from time to time, is attached hereto as **Exhibit 3**.

9. ColFin has a valid security interest in the rents collected on the Calumet Property pursuant to an assignment of rents (the “Calumet Assignment of Rents”). A true and accurate copy of the Calumet Assignment of Rents is attached hereto as **Exhibit 4**.

10. A Motion for Summary Judgment and Motion to Appoint Receiver were pending in the Calumet Foreclosure Case when the Petition was filed.

The Kingston Property

11. The Kingston Property is subject to a foreclosure action currently pending in Cook County that ColFin filed on November 2, 2009 as case number 09 CH 42821 (the “Kingston Foreclosure Case”).

12. ColFin filed the Kingston Foreclosure Case after the promissory note (the “Kingston Note”) secured by the Kingston Property matured on October 15, 2010. A true and accurate copy of the Kingston Note as it has been modified from time to time, is attached hereto as **Exhibit 5**.

13. ColFin has a valid security interest in the rents collected on the Kingston Property pursuant to an assignment of rents (the “Kingston Assignment of Rents”). A true and accurate copy of the Kingston Assignment of Rents is attached hereto as **Exhibit 6**.

14. A Motion for Summary Judgment and Motion to Appoint Receiver were pending in the Kingston Foreclosure Case when the Petition was filed.

ARGUMENT

15. Under 11 U.S.C. § 1112(b)(1), a Court may dismiss a Chapter 11 case if the movant establishes cause to do so, and the court does not identify any unusual circumstances that establish the dismissal is not in the best interest of the creditors. 11 U.S.C. § 1112(b)(1).

16. A “Chapter 11 debtor in possession owes a fiduciary duty to his creditors, is vested with all the power and duties of a trustee and must be held to the high standards of accountability that title connotes.” *In re Alvey*, 56 B.R. 171 (Bankr. W.D. Kentucky 1985). 11 U.S.C. § 363(c), requires prior court approval or creditor consent to use cash collateral. *Id.* Remedies for the unauthorized use of cash collateral by a debtor are dismissal of the Chapter 11 proceeding or relief from the automatic stay. *Id.* at 173.

17. Pursuant to the Champlain Assignment of Rents, ColFin has a secured right, title and interest in and to the rents from the Champlain Property. Therefore, the rent from the Champlain Property is ColFin’s cash collateral. *See* Exhibit 2, pg. 1.

18. Pursuant to the Calumet Assignment of Rents, ColFin has a secured right, title and interest in and to the rents from the Calumet Property. Therefore, the rent from the Calumet Property is ColFin’s cash collateral. *See* Exhibit 4, pg. 1.

19. Pursuant to the Kingston Assignment of Rents, ColFin has a secured right, title and interest in and to the rents from the Kingston Property. Therefore, the rent from the Kingston Property is ColFin’s cash collateral. *See* Exhibit 6, pg. 1.

20. On June 22, 2015 an order was entered allowing Debtor use of cash collateral through July 28, 2015. *See* Docket Number 77.

21. On January 15, 2015, the Debtor indicated during his 341 meeting of creditors, that the Champlain Property, the Calumet Property and the Kingston Property were fully occupied with tenants, and that he had collected rents and used those funds subsequent to the Petition Date without leave of court or approval from ColFin.

22. On July 28, 2015, counsel for Debtor requested continued use of cash collateral, but never filed a draft order within the time period set by the Court. *See* Docket Number 81. He

also failed to appear in Court on August 11, 2015, when this matter was set for status of cash collateral.

23. ColFin has not consented to the Debtor's use of the cash collateral collected on the Champlain Property, the Calumet Property, or the Kingston Property, and the Debtor has not sought leave of court to use that cash collateral on and after July 29, 2015. Therefore, the Debtor is improperly using cash collateral in violation of 11 U.S.C. § 363(c).

24. Cause for dismissal exists pursuant to 11 U.S.C. § 1112(b). No unusual circumstances are present establishing that dismissal is not in the creditor's best interests.

25. For these reasons, pursuant to 11 U.S.C. § 1112(b), ColFin requests this court dismiss this case with prejudice, or in the alternative, convert this case to a Chapter 7.

WHEREFORE, ColFin Bulls Funding A, LLC, as successor in interest to MB Financial Bank, N.A., respectfully requests this Honorable Court enter an Order dismissing this case pursuant to 11 U.S.C. § 1112(b), or in the alternative, convert this case to a Chapter 7, and for such other and further relief as this Court may deem necessary and just.

COLFIN BULLS FUNDING A, LLC
By: One of its Attorneys

/s/ Kristine M. Kolky
kkolky@taftlaw.com

William J. Serritella, Jr. (ARDC # 6210001)
Kristine M. Kolky (ARDC # 6295396)
TAFT, STETTINIUS & HOLLISTER LLP
Attorneys for the Plaintiff
111 East Wacker Drive, Suite 2800
Chicago, Illinois 60601
312-527-4000